IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1466 OF 2006

Mr. Pratap Madhavji Doshi & Anr. ...Petitioners
V/s.
Mumbai Municipal Corporation of Greater Mumbai & Anr. ...Respondents

Mr. A.R. Pande i/b. Mr. R.P. Ojha, for the Appellant.

Mr. S.H. Ujjainwala & Uday Kedar, for Respondent No.1.

Mr. Shitole, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : AUGUST 16, 2006.

P.C.:

1. Rule.

2. Advocate for Respondent No.1 waives service. Learned A.P.P. waives service for Respondent No.2. Considering the facts and circumstances of the case, taken up for hearing forthwith.

3. By the order dated 5th June 2006, the learned Additional Sessions Judge has rejected the application for condonation of delay made by the Petitioners. The delay was in filing a Revision Application before the Sessions Court by which the Petitioners sought to

challenge order issuing process on a private complaint filed by the 1st Respondent.

4. The learned Counsel appearing for the Petitioners invited my attention to averments made in the application for condonation of delay. He pointed out that when a Criminal Application was filed in this Court challenging the order issuing process, this Court granted liberty to the Petitioners to file Revision Application. It is submitted that averments made in the application and especially the averments regarding illness of the Petitioner No.1 were sufficient to make out sufficient cause for condonation of delay.

5. The learned Advocate appearing for Respondent No.1 submitted that there is a long unexplained delay in filing Revision Application by the Petitioners. It is submitted that there was no sufficient explanation for delay offered by the Petitioners. The learned A.P.P. pointed out that the averments made in the application for condonation of delay as regards sickness of the Petitioner No.1 relate to the year 2002. He pointed out that no explanation is given as to why the Petitioner No.2 did not take any steps. It is submitted that in view of the unexplained delay,

the learned Sessions Judge has rightly rejected the application for condonation of delay.

6. I have considered submissions. In paragraph No.4 of the Application for condonation of delay, the Petitioners have stated that the Petitioner No.1 had suffered a major heart attack on 11th June 2002 and thereafter, he is continuously under medical treatment. Age of the Petitioner No.1 is stated to be 67 years. In paragraph No.7 it is stated that the Petitioner No.2 is the daughter of the Petitioner No.1 and after her marriage, she is residing with her husband at Baroda. It is asserted that summons was served in August 2003 and thereafter, instructions were given to the Advocate engaged by the Petitioners to apply for discharge. It is alleged that after the Petitioners found that learned Advocate had not taken any steps to file discharge application, a Criminal Application under Section 482 of the Code of Criminal Procedure, 1973 was filed in this Court for challenging order issuing process. The said Criminal Application was disposed of by this Court by order dated 22nd March, 2006. The said order reads thus

> "This is an application challenging an order dated 25.04.2003 issuing process, proper remedy is to file Revision in Sessions Court. With liberty

> to file revision in Sessions Court, application is dismissed. If any application for condonation of delay is made, the same may be decided on its own merits and the period of pendency of this application in this Court may be taken into account while deciding the application. The trial may not proceed for a period of three weeks from today."

7. It appears that on the basis of the said order, Criminal Revision Application was filed by the present Petitioner in March, 2006.

8. If averments made in the application for condonation of delay are considered alongwith the aforesaid order passed by this Court, in my view, sufficient cause was made out for condonation of delay. It is the settled position of law that a liberal approach is required to be adopted while deciding the prayer for condonation of delay. It is not a case where there was negligence on the part of the petitioners. Delay could have been condoned by directing the Petitioners to pay costs to the 1st Respondent. Perusal of the impugned order shows that the fact of filing Criminal Application in this Court and the order passed by this Court on the Criminal Application is not at all considered by the learned Additional Sessions Judge. Hence, impugned order

deserves to be quashed and set aside. The Petitioner will have to pay costs to the 1st Respondent.

9. Hence, I pass the following order :-

(i) The impugned Judgement and Order dated 5th June, 2006 is quashed and set aside.

(ii) Misc. Application No.661 of 2006 filed by the Petitioner is allowed, subject to condition of Petitioner paying costs of Rs.2,500/- to the 1st Respondent within a period of 6 weeks from today.

(iii) Delay in preferring Criminal Revision Application Stamp No.2237 of 2006 is condoned.

(iv) If the amount of costs is paid by the Petitioner within the stipulated time, the learned Sessions Judge will hear the Revision Application filed by the Petitioner on its own merit.

(v) Rule is made absolute in the above terms.

JUDGE